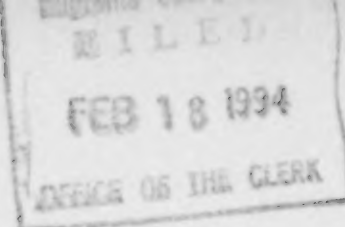


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No. 120, Original



In the
Supreme Court of the United States

October Term, 1993

STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF NEW YORK,

Defendant.

**SUPPLEMENTAL BRIEF
IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT**

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PROCEDURAL HISTORY

New Jersey is seeking to invoke the Court's original and exclusive jurisdiction in order to resolve a longstanding dispute between New Jersey and New York as to the location of their common boundary on Ellis Island, which lies in the Hudson River and in Upper New York Bay. New Jersey filed a Motion for Leave to File Complaint, Complaint, and Brief in Support of that motion, on April 26, 1993. New York filed its Brief in Opposition on June 24, 1993. New Jersey filed a Reply Brief on August 23, 1993. On October 4, 1993, the Court invited the Solicitor General to file a brief setting forth the position of the United States on the matter. The Solicitor General has not yet filed a brief.

New Jersey now is filing a Supplemental Brief in order to bring the Court's attention to new and significant facts that bear importantly on the pending motion.¹

STATEMENT OF FACTS

The issue raised in this matter is whether 24 of the 27½ acre island called Ellis Island is part of New York or New Jersey. As indicated in New Jersey's Brief in Support of Its Motion to File Complaint, the 1834 compact between New York and New Jersey fixed the boundary between the states at the mid-point of the Hudson River. All of the land under the waters of the river to the west of that line was owned by and was subject to the sovereignty and jurisdiction of New Jersey. Although Ellis Island was on the New Jersey side of the boundary line, the 1834 compact provided that the island, then a mere three acres, would be subject to the then-present jurisdiction of New York. In the years from 1890-1934, some 24 acres of land surrounding the original

¹ Since this is a supplement to the briefs previously filed by New Jersey, New Jersey relies on the questions presented, jurisdictional statement, constitutional and statutory provisions involved and summary of argument set forth in its earlier submissions.

island were artificially filled. New Jersey maintains that those 24 acres of filled underwater lands are part of New Jersey and remain subject to its sovereignty and jurisdiction.

New Jersey has alleged in its proposed Complaint that there is a pressing need for the prompt and final settlement of this controversy. Complaint ¶3. In support of this position, New Jersey pointed out that the decision in Collins v. Promark Products, Inc., 956 F.2d 383 (2d Cir. 1992), wherein the Second Circuit Court of Appeals ruled in a worker's compensation case that Ellis Island is subject to New York's jurisdiction, was being improperly relied upon by New York to expand its governmental authority over those portions of the island created by artificial filling, portions of the island which New Jersey maintains is under its sovereign jurisdiction. Complaint ¶3. The Complaint states as follows concerning this attempted expansion of authority by New York over the whole of Ellis Island:

For example, on or about November 10, 1992, the Landmarks Preservation Commission of the City of New York held hearings on the question of whether the whole of Ellis Island should be declared a city landmark. In taking that action, the Commission is relying upon extending the Collins decision to all matters involving state jurisdiction over the entire island. [Complaint, ¶3].

The hearings were reported in The Sunday Star Ledger, (Newark, N.J.) November 15, 1992, p.23. The news report also quoted a member of the Landmarks Commission as relying upon the Collins decision as a basis for convening the hearings on the landmark status of the entire island. Ibid.

In its brief in opposition, New York appeared to deny that there were any hearings at all and argued that even if hearings had been held, no decision had yet been rendered

by the Landmarks Commission. Therefore, New York maintained that New Jersey's complaint was premature. In its brief, New York stated:

New Jersey's claim addressing recent purported hearings by the New York City Landmarks Preservation Commission is similarly insufficient to justify an exercise of original jurisdiction by this Court. The Complaint does not allege that any decision by the Landmarks Preservation Commission has been issued concerning any area over which New Jersey purports to lay claim. Until such issuance, the claim and complaint are simply premature. [Brief of the State of New York at page 20].

The New York City Landmarks Preservation Commission has now acted. On November 16, 1993, it designated all of Ellis Island as a historic district of the City. The New York City Planning Commission held a public hearing on the matter on January 5, 1994. The Planning Commission adopted the Report of the Landmarks Preservation Commission at its meeting on January 19, 1994. On February 7, 1994, the New York City Council's Land Use Committee's Subcommittee on Landmarks, Public Siting and Maritime Uses held a public meeting concerning the designation of Ellis Island as a historic district. On February 9, 1994, the New York City Council approved the Landmarks Preservation Commission's designation.²

² If the Court grants the motion for leave to file its complaint, New Jersey intends to amend its complaint to include these additional factual assertions.

LEGAL ARGUMENT

THE RECENT ACTION OF THE LANDMARKS COMMISSION OF THE CITY OF NEW YORK AND THE CITY'S MUNICIPAL COUNCIL DECLARING THE WHOLE OF ELLIS ISLAND A HISTORIC DISTRICT OF THE CITY UNDERSCORES THE NEED FOR THE COURT TO EXERCISE ITS ORIGINAL JURISDICTION IN THIS CASE.

The procedure for actions within the Court's original jurisdiction is governed by Sup. Ct. R. 17. The rule does not expressly provide for the filing of supplemental briefs with respect to a pending motion for leave to file an original action. The Court's rules do, however, permit the filing of supplemental briefs at any time while a petition for a writ of certiorari is pending "calling attention to new cases or legislation or other intervening matter not available at the time of the party's last filing." Sup. Ct. R. 15.7. See also Sup. Ct. R. 18.9 and 25.5. The rules, and the objectives they are designed to serve in adequately informing the Court of material intervening events, thereby make it appropriate to file a supplemental brief with regard to a pending motion for leave to file an original action under Sup. Ct. R. 17. New Jersey is accordingly filing this supplemental brief to bring to the Court's attention intervening matters that bear importantly on the pending motion.

As indicated in the papers previously filed by New Jersey in support of its motion, there is a compelling need for the Court to entertain this case to definitively resolve the issue of whether the filled portions of Ellis Island are within New Jersey's boundaries, subject to its laws and

jurisdiction, or whether these properties are part of New York. In support of this contention, New Jersey specifically noted that the New York City Landmarks Commission was taking steps toward the designation of the whole of Ellis Island as a city historic district. Even though the Landmarks Commission had already held hearings on the matter, New York cavalierly dismissed New Jersey's concerns by referring to the Commission's proceedings as "purported" hearings. New York further maintained that until the issuance of a designation of landmark status by the City's Landmark Commission, the claim and the complaint are "simply premature." (Brief of the State of New York, p. 20).

The Landmark Commission has now acted. On November 16, 1993, the Commission declared the whole of Ellis Island to be a historic district of the City of New York. Its action has been approved by the City Council. The designation covers some thirty interconnected structures, many of which are built upon the 24 acres of filled land that New Jersey claims in this matter. Although New Jersey does not believe that its claim and complaint were premature at the time New Jersey's pending motion was filed with this Court, even New York would now have to agree that this case is not premature.

It should be added that the public statements by the Chair of the Landmarks Preservation Commission indicate that the Commission's action was motivated by the present consideration of plans for the development of Ellis Island by the National Park Service. As mentioned in our previously filed papers, the federal government has been considering a proposal to develop the island. The spokesperson for the Landmarks Commission reportedly stated that after the decision of the Second Circuit in Collins, the Chair of the Commission "jumped right in" because "she very much

wanted the City involved in decisions on Ellis Island." The Sunday Star Ledger (Newark, New Jersey), November 16, 1993. The view of Chair Laurie Beckelman was reflected in a report in The New York Times:

Two years ago, an official from the National Park Service supported a plan to raze twelve buildings on the 27.5 acre island to make way for a \$145 million conference center. But public opposition killed the plan. Ms. Beckelman said yesterday that the city's landmark designation would give it more influence in the future to oppose similar proposals. [The New York Times, November 17, 1993, at p. B4, column 1].

The City's actions are apparently not intended to forestall all development of the island but, rather, are directed at providing the City with a greater say in the manner in which the island is developed. See "Council Joins 2-State Fight Over Ellis I.," The New York Times, February 9, 1994, at p. B1, quoting City Councilwoman June M. Eisland as having said, "It brings us to the table in any discussions having to do with the island."

Actions by the City of New York and the statements of its officials amply support the reasons given by New Jersey for the Court to exercise its original jurisdiction in this case. Plans for the development of Ellis Island are under consideration by the federal government. Armed with an incorrect and non-binding opinion by the Court of Appeals for the Second Circuit, New York City is taking new and expansive steps in the exercise of its sovereign jurisdiction over the whole of the island. The Court should determine whether New York City can appropriately take such actions over lands subject to New Jersey's laws.

In summary, New York's actions make abundantly clear that there is a need for the exercise of original jurisdiction by the Court. The boundary between the two states on Ellis Island is in doubt and there is a critical need for a definitive ruling by the Court. Surely, this matter requires the attention of the one court in the land that is empowered to resolve these important issues and settle this dispute over jurisdiction of one of this nation's most historic sites.

CONCLUSION

For the reasons stated herein, and those set forth in New Jersey's previous briefs, the motion for leave to file a complaint should be granted.

Respectfully submitted,

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